

MEMORANDUM

Montana Board of Investments


Department of Commerce

2401 Colonial Drive, 3rd Floor

Helena, MT 59601

(406) 444-0001

To: Representative Jill Cohenour
House District 78

From: Carroll South, Executive Director 

Date: February 12, 2009

Subject: House Bill No. 413
Proposed Amendment

I have reviewed the proposed amendment to HB 413 and understand that; 1) 50.0 percent of the anticipated energy cost savings from the energy conservation project may be pledged to repayment of a school district's loan; and 2) the loan rate would be set and annually adjusted at 1.5 percent less than the INTERCAP loan rate. The above two items would be used to determine how many years it would take to repay the loan; thus determining the loan maturity date.

Pursuant to 17-6-201(1), MCA, the Board operates under the "prudent expert principal" defined as: 1) discharging its duties with the care, skill, prudence, and diligence that a prudent person acting in a like capacity with the same resources and familiar with like matters exercises in the conduct of an enterprise of a like character with like aims; 2) diversifying the holdings of each fund to minimize the risk of loss and maximize the rate of return; and 3) discharging its duties solely in the interest of and for the benefit of the funds managed.

Any loan made from the Fund to school districts, would have to be considered prudent by the Board and the loan would undergo the same credit analysis as any other Board loan. The Board would review the school district's general fund to determine loan repayment ability and could not depend solely upon an estimated energy savings for repayment, unless those savings were guaranteed. Additionally, the amendment would set the rate at 1.5 percent less than the INTERCAP rate, which would be considerably less than the posted loan rate to which all other Coal Tax Trust loans are subject. The rate as proposed in the amendment would result in a general fund subsidy. If a subsidy is intended it should be clearly stated.

All loans made from the Coal Tax Trust are "fixed" rather than variable. Linking the rate on these loans to INTECAP would require a different loan rate every year which would be difficult to administer in this program that is exclusively designed for fixed rates.

Under existing law, the Board has no authority to make Coal Tax Trust loans to school districts. If this bill passes as introduced, the Board would work with interested school districts in an effort to make prudent loans for the purposes specified in the bill.

STATE OF MONTANA BOARD OF INVESTMENTS

INTERCAP PROGRAM

PROGRAM DESCRIPTION AND PARTICIPATION REQUIREMENTS

The INTERCAP Program lends money to local governments for a variety of purposes. INTERCAP is a VARIABLE RATE loan program with the interest rate adjusting annually each February 16.

Eligible Projects

X	New and used equipment of all kinds	X	Interim financing for construction or cash flow loans
X	New and used vehicles of all kinds	X	Preliminary engineering and grant writing costs
X	Real property improvements, e.g., boilers, roofs, elevators	X	100% financing acceptable, no equity or matching money required

INTERCAP Program Parameters

X	Variable rate loan program	X	Interest and principal payments due semi-annually on each February 15 and August 15
X	Interest rate changes each February 16		
X	Short-term loans (under 1 year)	X	Prepayment without penalty; requires 30 days notice
X	Maximum loan term up to 15 years*	X	Money always available; no funding cycle

*Eligible governments must adhere to State law when financing capital projects and cannot finance projects for a longer term than allowed. Board staff will continue to consider the maximum loan term authorized in statute, as well as the repayment ability of the eligible borrower, when reviewing loan requests. In addition, loan terms cannot exceed the useful life of the project being financed.

Application and Funding Process

- a. Application - A completed Application should be submitted to the Board (via mail, fax or email).
- b. Approval - Loan requests under \$1,000,000 will be considered and approved by Board staff. Loan requests in excess of \$1,000,000 must receive Loan Committee approval. Loan requests in excess of \$5,000,000 must receive Board approval. Upon loan approval, a Term Sheet will be forwarded to the applicant for review. Borrower has one year from date of the Term Sheet to access funds or may be required to reapply for the loan.
- c. Funding - Three weeks prior to needing funds, borrower must notify the Board of the desire to draw down funds. The staff will forward two completed sets of the loan closing documents for the local government's review and execution. Accompanying the loan closing documents will be a form of a Resolution which the local government's governing body must adopt prior to closing the loan, and a form of local counsel opinion which the local government's attorney must execute stating that the loan is legal and binding upon the local government. Prior to receiving funds the borrower must execute and return the original set of loan documents three days prior to the funding date. The local government is required to annually appropriate funds for the repayment of the loan.

Loan Disbursements: Invoices

Invoices or certificates of completed work need to be submitted before INTERCAP funds are dispersed.

Determination and Notice of Interest Rate Change/Loan Repayments and Prepayments

The interest rate on all INTERCAP loans changes annually on each February 16 (the Interest Adjustment Date). The local government will receive notice of the new interest rate effective for the following 12 months on approximately March 15 of each year, in the form of a new amortization schedule. This schedule will show the INTERCAP loan repayments due February 15 and August 15. Notification of payments due will be sent by the Trustee approximately 30 days prior to the due date. Prepayments will be allowed without a prepayment penalty upon thirty days notice to the Board.

General Program Requirements (Sections 1-5 and 7-8 of Application)

All INTERCAP loans must meet the following general requirements:

- a) A local government must show creditworthiness;
- b) The project must be lawfully authorized by statute;
- c) Loan term is limited to useful life of the project, borrower term limit in statute, or 15 years, whichever is less;
- d) State and federal permits, if required, must be obtained, usually before loan closing;
- e) If a project is dependent on other revenue sources, other than funding from INTERCAP such funds must be committed to the project before the INTERCAP loan funding;
- f) If an environmental impact may result from a loan, the Board must comply with the states MEPA statute; and,
- g) A legal opinion regarding the loan transaction is required from the local government's attorney.

SPECIFIC INTERCAP LOAN REQUIREMENTS

1. Short Term Loans (Section 6 of Application)

The INTERCAP program can lend money to local government to cover two types of needs: 1) money to provide financing on an interim basis for projects funded by other sources which will repay the INTERCAP loan; or 2) operating money to cover a temporary cash flow deficit.

Nearly all local governments are eligible to borrow short term INTERCAP money for temporary project financing. Examples of such use include interim financing in anticipation of federal grant or state sources. Cities, towns, counties and school districts are specifically authorized to borrow for cash flow deficits; other types of local governments may be able to borrow through their respective county.

- a) Normal local government debt limitations do not apply to Short Term INTERCAP loans per 7-6-1115, MCA.
- b) All INTERCAP loans made to cover temporary cash flow problems must be repaid by June 30 of the fiscal year the loan is awarded.

2. **General Fund Indebtedness (Section 9A of Application)**

Many Montana local governments have specific statutory authorization to incur indebtedness for specific purposes without a vote of the electors. These obligations are generally payable from the general fund of the local government and thus the government's ability to levy taxes for the payment of the obligation is subject to any statutory mill levy limitations that may be applicable including, in many cases, I-105. The obligations are payable from any legally available funds of the issuer and thus would include revenues derived from sources other than taxes to the extent authorized by law. All general INTERCAP requirements apply, in addition to the statutory authority for general fund loans are:

- a) Cities and Towns 7-7-4101, 7-7-4201 & 7-5-4306 or 7-7-4101 & 7-7-4104
Counties 7-5-2306 M.C.A. and 7-7-2402 M.C.A.
School Districts 20-9-471 M.C.A.
- b) Loan term is limited to useful life of the project, borrower term limit in statute, or 15 years, whichever is less.

3. **Enterprise Debt of Municipalities, Counties and County Water and Sewer Districts (Section 9B of Application)**

Local governments typically provide water, sewer and trash disposal services through user fees and charges. If the local government is financing equipment or improvements to a utility system and intends to use revenues of the system to repay the loan, the Board will require a pledge of the revenues of the system and require certain other covenants particularly with respect to maintaining adequate fees or charges. Revenue obligations are not secured by the full faith and credit of the issuer and do not require voter approval. Specific INTERCAP requirements are:

- a) Loan term is limited to useful life of the project, borrower term limit in statute, or 15 years, whichever is less;
- b) Documentation of rates and charges currently in effect and proposed;
- c) Rates and charges must be set to produce net revenues (revenues less expenditures for operations) to cover debt service by a factor of 1.25 times, (1.10 times for water and sewer districts);
- d) A reserve account may be required;
- e) Parity obligation required where reasonable; and
- f) Election requirement for county water and sewer districts.

4. **General Obligation Bonded Debt (Section 9C of Application)**

General obligation debt in Montana is backed by the full faith and credit of the issuer and obligates the issuer to levy a tax, without limitation as to rate or amount, sufficient to repay the obligation when due. General obligation debt can usually only be authorized after an election has approved the bond obligation. The levy for repayment of the obligations is outside the limitations imposed by I-105. Specific INTERCAP requirements are:

- a) Eligible local governments are:
 - a. Counties; 7-7-2201;MCA
 - b. Cities; 7-7-4201; MCA
 - c. School Districts; 20-9-4; MCA
 - d. School District building reserve; 20-9-502; MCA
 - e. Rural Fire Districts; 7-33-2109; MCA
 - f. County Water and Sewer Districts; 7-13-2331; MCA

*Statute allows a maximum 5-year term loan when pledging building reserve levy as repayment

- b) Loan term is limited to useful life of the project, borrower term limit in statute, or 15 years, whichever is less.
- c) Attorney General's certification (terminates October 1, 2007); and
- d) Must be within local government's legal debt limit.

5. Rural Fire District and Fire Service Area Indebtedness (Section 9D of Application)

Rural Fire Districts and Fire Service Areas have specific statutory authorization to incur indebtedness for specific purposes without a vote of the electors. Rural Fire District obligations are payable from the district's general fund and are subject to any statutory mill levy limitations. Fire Service Area obligations are payable from assessments on structures within the area. All general INTERCAP requirements apply, in addition to the statutory debt limitations for Fire Districts and Fire Service Areas:

- a) Rural Fire Districts 7-33-2109 M.C.A.
Rural Fire Service Areas 7-33-2404 M.C.A.
- b) Maximum loan limit is subject to indebtedness capacity; and,
- c) Loan term is limited to useful life of the project, borrower term limit in statute, or 15 years, whichever is less.

6. Special or Rural Improvement District Bonded Debt (Section 9E of Application)

Special Improvement District (SID) bonds and Rural Improvement District (RID) bonds are payable from special assessments levied against the real property in the district whom benefits by the improvements financed by bonds. They are not full faith and credit obligations of the city or county. Special assessments may become a lien on the property in the principal amount of the assessment. They are pre-payable in full on any payment date. SID's may also be secured by the issuer's revolving fund. Specific INTERCAP requirements are:

- a) Loan term is limited to useful life of the project, borrower term limit in statute, or 15 years, whichever is less;
- b) \$500,000 loan limit;
- c) Subject to 7-12-2171(b), loans in excess of \$250,000 require a non-marketability opinion from underwriters. (Two non-marketability opinions will suffice).
- d) All SID/RID requirements for creating the district must be satisfied;
- e) City or county fund must secure SID/RID with pledge to levy for and maintain the revolving fund to maximum amount permitted by law; and,
- f) Staff review of all of local government's SID's and balance in the revolving fund to judge overall credit worthiness.

WE APPRECIATE YOUR INTEREST AND BUSINESS!
PLEASE FEEL FREE TO CALL
LOUISE WELSH AT 406-444-0891 FOR ASSISTANCE

Montana Board of Investments Commercial Loan Rate Sheet

Interest Rates 12-Feb-09 Through 18-Feb-09

COMMERCIAL, MULTI-FAMILY, AND AGRICULTURE RATES

Loan (4) Term	Fed Guarantee (1)(2) RBS/FSA/BIA/SBA(3)		Participation (1)(2)		Link
	Monthly	Annual	Monthly	Annual	Quarterly
5 Yrs.	4.710%	5.010%	5.110%	5.660%	7.500%
10 Yrs.	5.940%	6.240%	6.340%	6.890%	8.000%
15 Yrs.	6.410%	6.710%	6.810%	7.360%	8.500%
20 Yrs.	6.940%	7.290%	7.340%	7.940%	9.000%
25 Yrs.	7.335%	7.685%	7.735%	8.335%	
30 Yrs.	7.780%	8.130%			

(1) Up To 2.50% Rate Reduction From Posted Rate Available For Jobs Created By Borrower.

(2) 0.50% Rate Reduction For Borrower's Aggregate Small Business Loans Totaling Less Than \$369,000.

(3) SBA 7(a) Loans: For "ongoing service fee" add 0.55% (55 basis points) for loans authorized on or after October 1, 2008.

(4) If the loan term is "between" posted loan terms, use the next higher rate.

Private Annual Wage Effective July 1, 2008 \$31,426

Prime 3.25%

Additional Rate Information:

Commercial Rates: Herb Kulow 444-1218 or Nancy Rivera 444-1217

Commercial Loan Program - Accounting Staff contact:

Accountant/Commercial Loan Program: Linda Christopher, 444-0787 or by email: lchristopher@mt.gov

**montana
board of investments**

INTERCAP LOAN RATE* HISTORY

Year	Loan Rate	
1987	5.625%	
1988	6.625%	
1989	7.950%	
1990	7.500%	
1991	6.350%	
1992	4.950%	
1993	4.350%	
1994	4.500%	
1995	6.400%	
1996	4.850%	
1997	4.750%	
1998	4.850%	
1999	4.300%	
2000	5.600%	
2001	4.750%	
2002	3.150%	
2003	2.850%	
2004	2.700%	
2005	3.800%	
2006	4.750%	
2007	4.850%	
2008	4.25%	
Overall Average	4.986%	
Average past 10 years	4.100%	
*variable rate changes every February 16.		